

## Subpart E—Approval of State Programs and Delegation of Federal Authorities

SOURCE: 58 FR 62283, Nov. 26, 1993, unless otherwise noted.

### §63.90 Program overview.

The regulations in this subpart establish procedures consistent with section 112(l) of the Clean Air Act (Act) (42 U.S.C. 7401-7671q). This subpart establishes procedures for the approval of State rules or programs to be implemented and enforced in place of certain otherwise applicable section 112 Federal rules, emission standards or requirements (including section 112 rules promulgated under the authority of the Act prior to the 1990 Amendments to the Act). Authority to implement and enforce section 112 Federal rules as promulgated without changes may be delegated under procedures established in this subpart. In this process, States may seek approval of a State mechanism for receiving delegation of existing and future unchanged Federal section 112 standards. This subpart also establishes procedures for the review and withdrawal of section 112 implementation and enforcement authorities delegated through this subpart. This subpart also establishes procedures for the approval of State rules or programs to establish limitations on the potential to emit pollutants listed in or pursuant to section 112(b) of the Act.

(a) *Definitions.* The following definitions apply to this subpart.

*Applicability criteria* means the regulatory criteria used to define all emission points within all affected sources subject to a specific section 112 rule.

*Approval* means a determination by the Administrator that a State rule or program meets the criteria of §63.91 and the additional criteria of either §63.92, §63.93 or §63.94, where appropriate. For accidental release prevention programs, the criteria of §63.95 must also be met.

*Compliance and enforcement measures* means requirements within a rule or program relating to compliance and enforcement, including but not necessarily limited to monitoring, test methods and procedures, record-keeping, reporting, compliance certifi-

cation, inspection, entry, sampling or accidental release prevention oversight.

*Level of control* means the degree to which a rule or program requires a source to limit emissions or to employ design, equipment, work practice, operational, accident prevention or other requirements or techniques (including a prohibition of emissions) for:

(1)(i) Each hazardous air pollutant, if individual pollutants are subject to emission limitations, and

(ii) The aggregate total of hazardous air pollutants, if the aggregate grouping is subject to emission limitations, provided that the rule or program would not lead to an increase in risk to human health or the environment; and

(2) Each substance regulated under section 112(r).

*Local agency* means a local air pollution control agency or, for the purposes of §63.95, any local agency or entity having responsibility for preventing accidental releases which may occur at a source regulated under section 112(r).

*Program* means, for the purposes of an approval under §63.94, a collection of State statutes, rules or other requirements which limits or will limit the emissions of hazardous air pollutants from affected sources.

*Stringent or stringency* means the degree of rigor, strictness or severity a statute, rule, emission standard or requirement imposes on an affected source as measured by the quantity of emissions, or as measured by parameters relating to rule applicability and level of control, or as otherwise determined by the Administrator.

(b) *Local agency coordination with state and territorial agencies.* Local agencies submitting a rule or program for approval under this subpart shall consult with the relevant State or Territorial agency prior to making a request for approval to the Administrator. A State or Territorial agency may submit requests for approval on behalf of a local agency after consulting with that local agency.

(c) *Authorities retained by the Administrator.* (1) The following authorities will be retained by the Administrator and will not be delegated:

(i) The authority to add or delete pollutants from the list of hazardous air

pollutants established under section 112(b);

(ii) The authority to add or delete substances from the list of substances established under section 112(r);

(iii) The authority to delete source categories from the Federal source category list established under section 112(c)(1) or to subcategorize categories on the Federal source category list after proposal of a relevant emission standard;

(iv) The authority to revise the source category schedule established under section 112(e) by moving a source category to a later date for promulgation; and

(v) Any other authorities determined to be nondelegable by the Administrator.

(2) Nothing in this subpart shall prohibit the Administrator from enforcing any applicable rule, emission standard or requirement established under section 112.

(3) Nothing in this subpart shall affect the authorities and obligations of the Administrator or the State under title V of the Act or under regulations promulgated pursuant to that title.

(d) *Federally-enforceable requirements.* All rules and requirements approved under this subpart and all resulting part 70 operating permit conditions are enforceable by the Administrator and citizens under the Act.

(e) *Standards not subject to modification or substitution.* With respect to radionuclide emissions from licensees of the Nuclear Regulatory Commission or licensees of Nuclear Regulatory Commission Agreement States which are subject to 40 CFR part 61, subpart I, T, or W, a State may request that the EPA approve delegation of implementation and enforcement of the Federal standard pursuant to § 63.91, but no changes or modifications in the form or content of the standard will be approved pursuant to § 63.92, § 63.93, or § 63.94.

[58 FR 62283, Nov. 26, 1993, as amended at 61 FR 36297, July 10, 1996]

#### **§ 63.91 Criteria common to all approval options.**

(a) Approval process. To obtain approval under this subpart of a rule or program that is different from the Fed-

eral rule, the criteria of this section and the criteria of either § 63.92, § 63.93 or § 63.94 must be met. For approval of State programs to implement and enforce Federal section 112 rules as promulgated without changes (except for accidental release programs), only the criteria of this section must be met. This includes State requests for upfront approval of their mechanism for taking delegation of future unchanged Federal section 112 standards and requirements as well as approval to implement and enforce unchanged Federal section 112 standards and requirements on a rule-by rule basis. For approval of State rules or programs to implement and enforce the Federal accidental release prevention program as promulgated without changes, the requirements of this section and section § 63.95 must be met. In the case of accidental release prevention programs which differ from the Federal accidental release prevention program, the requirements of this section, § 63.95, and either § 63.92 or § 63.93 must be met. The Administrator may, under the authority of Section 112(l) and this subpart, also approve a State program designed to establish limits on the potential to emit of pollutants listed pursuant to Section 112(b) of the Clean Air Act. For a State's initial request for approval of any rule or program under this subpart, and except as otherwise specified under § 63.92, § 63.93, or § 63.94 for a State's subsequent requests for approval, the approval process will be the following:

(1) Upon receipt of a request for approval, the EPA will review the request for approval and notify the State within 30 days of receipt whether the request for approval is complete according to the criteria in this subpart. If a request for approval is found to be incomplete, the Administrator will so notify the State and will specify the deficient elements of the State's request.

(2) Within 45 days after receipt of a complete request for approval, the Administrator will seek public comment for a minimum of 30 days on the State request for approval. The Administrator will require that comments be submitted concurrently to the State.

(3) If, after review of public comments and any State responses to comments submitted to the Administrator within 30 days of the close of the public comment period, the Administrator finds that the criteria of this section are met, the State rule or program will be approved by the Administrator under this section, published in the FEDERAL REGISTER, and incorporated directly or by reference, in the appropriate subpart of part 63. Authorities approved under § 63.95 will be incorporated pursuant to requirements under section 112(r).

(4) Within 180 days of receiving a complete request for approval, the Administrator will either approve or disapprove the State rule or program.

(5) If the Administrator finds that; any of the criteria of this section are not met, or any of the criteria of either § 63.92, § 63.93 or § 63.94 under which the request for approval was made are not met, the Administrator will disapprove the State rule or program. If a State rule or program is disapproved, the Administrator will notify the State of any revisions or additions necessary to obtain approval. Any resubmittal by a State of a request for approval will be considered a new request under this subpart.

(6) If the Administrator finds that; all of the criteria of this section are met; and all of the criteria of either § 63.92, § 63.93 or § 63.94 are met, the Administrator will approve the State rule or program and thereby delegate authority to implement and enforce the approved rule or program in lieu of the otherwise applicable Federal rules, emission standards or requirements. The approved State rule or program shall be Federally enforceable from the date of publication of approval. When a State rule or program is approved by the Administrator under this subpart, applicable part 70 permits shall be revised according to the provisions of § 70.7(f) of this chapter. Operating permit conditions resulting from any otherwise applicable Federal section 112 rules, emission standards or requirements will not be expressed in the State's part 70 permits or otherwise implemented or enforced by the State or by the EPA unless and until authority to enforce the approved State rule

or program is withdrawn from the State under § 63.96. In the event approval is withdrawn under § 63.96, all otherwise applicable Federal rules and requirements shall be enforceable in accordance with the compliance schedule established in the withdrawal notice and relevant part 70 permits shall be revised according to the provisions of § 70.7(f) of this chapter.

(b) *Criteria for approval.* Any request for approval under this subpart shall meet all section 112(l) approval criteria specified by the otherwise applicable Federal rule, emission standard or requirements and all of the approval criteria of this section. The State shall provide the Administrator with the following.

(1) A written finding by the State Attorney General (or for a local agency, the General Counsel with full authority to represent the local agency) that the State has the necessary legal authority to implement and to enforce the State rule or program upon approval and to assure compliance by all sources within the State with each applicable section 112 rule, emission standard or requirement. At a minimum, the State must have the following legal authorities concerning enforcement:

(i) The State shall have enforcement authorities that meet the requirements of § 70.11 of this chapter.

(ii) The State shall have authority to request information from regulated sources regarding their compliance status.

(iii) The State shall have authority to inspect sources and any records required to determine a source's compliance status.

(iv) If a State delegates authorities to a local agency, the State must retain enforcement authority unless the local agency has authorities that meet the requirements of § 70.11 of this chapter.

(2) A copy of State statutes, regulations and other requirements that contain the appropriate provisions granting authority to implement and enforce the State rule or program upon approval.

(3) A demonstration that the State has adequate resources to implement and enforce all aspects of the rule or

program upon approval, which includes:

(i) A description in narrative form of the scope, structure, coverage and processes of the State program;

(ii) A description of the organization and structure of the agency or agencies that will have responsibility for administering the program; and

(iii) A description of the agency staff who will carry out the State program, including the number, occupation, and general duties of the employees.

(4) A schedule demonstrating expeditious State implementation of the rule or program upon approval.

(5) A plan that assures expeditious compliance by all sources subject to the rule or program upon approval. The plan should include at a minimum a complete description of the State's compliance tracking and enforcement program, including but not limited to inspection strategies.

(6) A demonstration of adequate legal authority to assure compliance with the rule or program upon approval. At a minimum, the State must have the following legal authorities concerning enforcement:

(i) The State shall have enforcement authorities that meet the requirements of § 70.11 of this chapter.

(ii) If a State delegates authorities to a local agency, the State must retain enforcement authority unless the local agency has authorities that meet the requirements of § 70.11 of this chapter.

(c) *Revisions.* Within 90 days of any State amendment, repeal or revision of any State rule, program, or other authorities supporting an approval under this subpart, a State must provide the Administrator with a copy of the revised authorities and meet the requirements of either paragraph (c) (1) or (2) of this section.

(1)(i) The State shall provide the Administrator with a written finding by the State Attorney General (or for a local agency, the General Counsel with full authority to represent the local agency) that the State's revised legal authorities are adequate to continue to implement and to enforce all previously approved State rules and the approved State program (as applicable) and adequate to continue to assure compliance by all sources within the

State with approved rules, the approved program (as applicable) and each applicable section 112 rule, emission standard or requirement.

(ii) If the Administrator determines that the written finding is not adequate, the State shall request approval of the revised rule or program according to the provisions of paragraph (c) (2) of this section.

(2) The State shall request approval under this subpart of a revised rule or program.

(i) If the Administrator approves the revised rule or program, the revised rule or program will replace a rule or program previously approved.

(ii) If the Administrator disapproves the revised rule or program, the Administrator will initiate procedures under § 63.96 to withdraw approval of any previously approved rule or program that may be affected by the revised authorities.

(iii) Until such time as the Administrator approves or withdraws approval of a revised rule or program, the previously approved rule or program remains Federally enforceable.

[58 FR 62283, Nov. 26, 1993, as amended at 61 FR 36297, July 10, 1996]

#### **§ 63.92 Approval of a State rule that adjusts a section 112 rule.**

Under this section a State may seek approval of a State rule with specific adjustments to a Federal section 112 rule.

(a) *Approval process.* (1) If the Administrator finds that the criteria of this section and the criteria of § 63.91 are met, the State rule will be approved by the Administrator, published in the FEDERAL REGISTER and incorporated, directly or by reference, in the appropriate subpart of this part 63, without additional notice and opportunity for comment. Rules approved under § 63.95 will be incorporated pursuant to requirements under section 112(r).

(2) If the Administrator finds that any one of the State adjustments to the Federal rule is in any way ambiguous with respect to the stringency of applicability, the stringency of the level of control, or the stringency of

the compliance and enforcement measures for any affected source or emission point, the Administrator will disapprove the State rule.

(3) Within 90 days of receiving a complete request for approval under this section, the Administrator will either approve or disapprove the State rule.

(b) *Criteria for approval.* Any request for approval under this section shall meet all of the criteria of this section and § 63.91 before approval. The State shall provide the Administrator with:

(1) A demonstration that the public within the State has had adequate notice and opportunity to submit written comment on the State rule; and

(2) A demonstration that each State adjustment to the Federal rule individually results in requirements that:

(i) Are unequivocally no less stringent than the otherwise applicable Federal rule with respect to applicability;

(ii) Are unequivocally no less stringent than the otherwise applicable Federal rule with respect to level of control for each affected source and emission point;

(iii) Are unequivocally no less stringent than the otherwise applicable Federal rule with respect to compliance and enforcement measures for each affected source and emission point; and

(iv) Assure compliance by every affected source no later than would be required by the otherwise applicable Federal rule.

(3) State adjustments to Federal section 112 rules which may be part of an approved rule under this section are:

(i) Lowering a required emission rate or de minimis level;

(ii) Adding a design, work practice, operational standard, emission rate or other such requirement;

(iii) Increasing a required control efficiency;

(iv) Increasing the frequency of required reporting, testing, sampling or monitoring;

(v) Adding to the amount of information required for records or reports;

(vi) Decreasing the amount of time to come into compliance;

(vii) Subjecting additional emission points or sources within a source category to control requirements; and

(viii) Any adjustments allowed in a specific section 112 rule.

**§ 63.93 Approval of State authorities that substitute for a section 112 rule.**

Under this section a State may seek approval of State authorities which differ in form from a Federal section 112 rule for which they would substitute, such that the State authorities do not qualify for approval under § 63.92.

(a) *Approval process.* (1) Within 45 days after receipt of a complete request for approval under this section, the Administrator will seek public comment for a minimum of 30 days on the State request for approval. The Administrator will require that comments be submitted concurrently to the State.

(2) If, after review of public comments and any State responses to comments submitted to the Administrator within 30 days of the close of the public comment period, the Administrator finds that the criteria of this section and the criteria of § 63.91 are met, the State authorities will be approved by the Administrator under this section and the approved authorities will be published in the FEDERAL REGISTER and incorporated directly or by reference, in the appropriate subpart of part 63. Authorities approved under § 63.95 will be incorporated pursuant to requirements under section 112(r).

(3) If the Administrator finds that any of the requirements of this section or § 63.91 have not been met, the Administrator will disapprove the State authorities.

(4) Authorities submitted for approval under this section shall include either:

(i) State rules or other requirements enforceable under State law that would substitute for a section 112 rule; or

(ii)(A) The specific permit terms and conditions for the source or set of sources in the source category for which the State is requesting approval under this section, including control requirements and compliance and enforcement measures, that would substitute for the permit terms and conditions imposed by the otherwise applicable section 112 rule for such source or set of sources.

(B) The Administrator will approve authorities specified under paragraph (a)(4)(ii)(A) of this section only when the State submitting the request already has an approved program under § 63.94, the Federal standard for the source category has been promulgated under section 112(h), and the Administrator has not determined the work practice, design, equipment or operational requirements submitted by the State to be inadequate under the provisions of the Federal standard.

(5) Within 180 days of receiving a complete request for approval under this section, the Administrator will either approve or disapprove the State request.

(b) *Criteria for approval.* Any request for approval under this section shall meet all of the criteria of this section and § 63.91 before approval. The State shall provide the Administrator with detailed documentation that the State authorities contain or demonstrate:

(1) Applicability criteria that are no less stringent than those in the respective Federal rule;

(2) Levels of control and compliance and enforcement measures that result in emission reductions from each affected source or accidental release prevention program requirements for each affected source that are no less stringent than would result from the otherwise applicable Federal rule;

(3) A compliance schedule that assures that each affected source is in compliance no later than would be required by the otherwise applicable Federal rule; and

(4) At a minimum, the approved State authorities must include the following compliance and enforcement measures. (For authorities addressing the accidental release prevention program, minimum compliance and enforcement provisions are described in § 63.95.)

(i) The approved authorities must include a method for determining compliance.

(ii) If a standard in the approved authorities is not instantaneous, a maximum averaging time must be established.

(iii) The authorities must establish an obligation to periodically monitor or test for compliance using the meth-

od established per § 63.93(b)(4)(i) sufficient to yield reliable data that are representative of the source's compliance status.

[58 FR 62283, Nov. 26, 1993, as amended at 61 FR 36298, July 10, 1996]

**§ 63.94 Approval of a State program that substitutes for section 112 emission standards.**

Under this section a State may seek approval of a State program to be implemented and enforced in lieu of specified existing and future Federal emission standards or requirements promulgated under sections 112(d), (f) or (h), for those affected sources permitted by the State under part 70 of this chapter.

(a) *Approval process.* (1) Within 45 days after receipt of a complete request for approval under this section the Administrator will seek public comment for a minimum of 30 days on the State request for approval. The Administrator will require that comments be submitted concurrently to the State.

(2) If, after review of all public comments, and State responses to comments submitted to the Administrator within 30 days of the close of the public comment period, the Administrator finds that the criteria of this section and the criteria of § 63.91 are met, the State program will be approved by the Administrator. The approved State commitment made under paragraph (b)(2) of this section and reference to all documents submitted under § 63.91(b)(2) will be published in the FEDERAL REGISTER and incorporated directly or by reference in the appropriate subpart of part 63.

(3) If the Administrator finds that any of the criteria of this section or § 63.91 have not been met, the Administrator will disapprove the State program.

(4) Within 180 days of receiving a complete request for approval under this section, the Administrator will either approve or disapprove the State request.

(b) *Criteria for approval.* Any request for approval under this section shall meet all of the criteria of this section and § 63.91 before approval. The State shall provide the Administrator with:

(1) A reference to all specific sources or source categories listed pursuant to subsection 112(c) for which the State is seeking authority to implement and enforce standards or requirements under this section;

(2) A legally binding commitment adopted through State law that, after approval:

(i) For each source subject to Federal section 112 emission standards or requirements for which approval is sought, part 70 permits shall be issued or revised by the State in accordance with procedures established in part 70 of this chapter and in accordance with the schedule submitted under § 63.91(b)(5) assuring expeditious compliance by all sources; and

(ii) All such issued or revised part 70 permits shall contain conditions that:

(A) Reflect applicability criteria no less stringent than those in the otherwise applicable Federal standards or requirements;

(B) Require levels of control for each affected source and emission point no less stringent than those contained in the otherwise applicable Federal standards or requirements;

(C) Require compliance and enforcement measures for each source and emission point no less stringent than those in the otherwise applicable Federal standards or requirements;

(D) Express levels of control and compliance and enforcement measures in the same form and units of measure as the otherwise applicable Federal standard or requirement;

(E) Assure compliance by each affected source no later than would be required by the otherwise applicable Federal standard or requirement.

**§ 63.95 Additional approval criteria for accidental release prevention programs.**

(a) A State submission for approval of an Accidental Release Prevention (ARP) program must meet the criteria and be in accordance with the procedures of this section, § 63.91, and, where appropriate, either § 63.92 or § 63.93.

(b) The State ARP program application shall contain the following elements consistent with the procedures in § 63.91 and, where appropriate, either § 63.92 or § 63.93:

(1) A demonstration of the State's authority and resources to implement and enforce regulations which are at least as stringent as regulations promulgated under section 112(r) that specify substances, related thresholds and a risk management program,

(2) Procedures for:

(i) Registration of stationary sources, as defined in section 112(r)(2)(C) of the Act, which clearly identifies the State entity to receive the registration;

(ii) Receiving and reviewing risk management plans;

(iii) Making available to the public any risk management plan submitted to the State pursuant to provisions specified in section 112(r) which are consistent with section 114(c) of the Act; and

(iv) Providing technical assistance to subject sources, including small businesses;

(3) A demonstration of the State's authority to enforce all accidental release prevention requirements including a risk management plan auditing strategy;

(4) A description of the coordination mechanisms the State implementing agency will use with:

(i) The Chemical Safety and Hazard Investigation Board, particularly during accident investigation. This requirement will not take effect until the Chemical Safety and Hazard Investigation Board is convened; and

(ii) The State Emergency Response Commission, and the Local Emergency Planning Committees; and

(iii) The air permitting program with respect to sources subject to both section 112(r) of the Act and permit requirements under part 70 of this chapter.

(c) A State may request approval for a complete or partial program. A partial accidental release prevention program must include the core program elements listed in paragraph (b) of this section.

[58 FR 62283, Nov. 26, 1993, as amended at 61 FR 36298, July 10, 1996]

**§ 63.96 Review and withdrawal of approval.**

(a) *Submission of information for review of approval.* (1) The Administrator may

at any time request any of the following information to review the adequacy of implementation and enforcement of an approved rule or program and the State shall provide that information within 45 days of the Administrator's request:

(i) Copies of any State statutes, rules, regulations or other requirements that have amended, repealed or revised the approved State rule or program since approval or since the immediately previous EPA review;

(ii) Information to demonstrate adequate State enforcement and compliance monitoring activities with respect to all approved State rules and with all section 112 rules, emission standards or requirements;

(iii) Information to demonstrate adequate funding, staff, and other resources to implement and enforce the State's approved rule or program;

(iv) A schedule for implementing the State's approved rule or program that assures compliance with all section 112 rules and requirements that the EPA has promulgated since approval or since the immediately previous EPA review,

(v) A list of part 70 or other permits issued, amended, revised, or revoked since approval or since immediately previous EPA review, for sources subject to a State rule or program approved under this subpart.

(vi) A summary of enforcement actions by the State regarding violations of section 112 requirements, including but not limited to administrative orders and judicial and administrative complaints and settlements.

(2) Upon request by the Administrator, the State shall demonstrate that each State rule, emission standard or requirement applied to an individual source is no less stringent as applied than the otherwise applicable Federal rule, emission standard or requirement.

(b) *Withdrawal of approval of a state rule or program.* (1) If the Administrator has reason to believe that a State is not adequately implementing or enforcing an approved rule or program according to the criteria of this section or that an approved rule or program is not as stringent as the otherwise applicable Federal rule, emission standard

or requirements, the Administrator will so inform the State in writing and will identify the reasons why the Administrator believes that the State's rule or program is not adequate. The State shall then initiate action to correct the deficiencies identified by the Administrator and shall inform the Administrator of the actions it has initiated and completed. If the Administrator determines that the State's actions are not adequate to correct the deficiencies, the Administrator will notify the State that the Administrator intends to withdraw approval and will hold a public hearing and seek public comment on the proposed withdrawal of approval. The Administrator will require that comments be submitted concurrently to the State. Upon notification of the intent to withdraw, the State will notify all sources subject to the relevant approved rule or program that withdrawal proceedings have been initiated.

(2) Based on any public comment received and any response to that comment by the State, the Administrator will notify the State of any changes in identified deficiencies or actions needed to correct identified deficiencies. If the State does not correct the identified deficiencies within 90 days after receiving revised notice of deficiencies, the Administrator shall withdraw approval of the State's rule or program upon a determination that:

(i) The State no longer has adequate authorities to assure compliance or resources to implement and enforce the approved rule or program, or

(ii) The State is not adequately implementing or enforcing the approved rule or program, or

(iii) An approved rule or program is not as stringent as the otherwise applicable Federal rule, emission standard or requirement.

(3) The Administrator may withdraw approval for part of a rule, for a rule, for part of a program, or for an entire program.

(4) Any State rule, program or portion of a State rule or program for which approval is withdrawn is no longer Federally enforceable. The Federal rule, emission standard or requirement that would have been applicable in the absence of approval under this



subpart will be the federally enforceable rule, emission standard or requirement.

(i) Upon withdrawal of approval, the Administrator will publish an expeditious schedule for sources subject to the previously approved State rule or program to come into compliance with applicable Federal requirements. Such schedule shall include interim emission limits where appropriate. During this transition, sources must be operated in a manner consistent with good air pollution control practices for minimizing emissions.

(ii) Upon withdrawal, the State shall reopen, under the provisions of § 70.7(f) of this chapter, the part 70 permit of each source subject to the previously approved rules or programs in order to assure compliance through the permit with the applicable requirements for each source.

(iii) If the Administrator withdraws approval of State rules applicable to sources that are not subject to part 70 permits, the applicable State rules are no longer Federally enforceable.

(iv) If the Administrator withdraws approval of a portion of a State rule or program, other approved portions of the State rule or program that are not withdrawn shall remain in effect.

(v) Any applicable Federal emission standard or requirement shall remain enforceable by the EPA as specified in section 112(l)(7) of the Act.

(5) If a rule approved under § 63.93 is withdrawn under the provisions of § 63.96(b)(2) (i) or (ii), and, at the time of withdrawal, the Administrator finds the rule to be no less stringent than the otherwise applicable Federal requirement, the Administrator will grant equivalency to the previously approved State rule under the appropriate provisions of this part.

(6) A State may submit a new rule, program or portion of a rule or program for approval after the Administrator has withdrawn approval of the State's rule, program or portion of a rule or program. The Administrator will determine whether the new rule or

program or portion of a rule or program is approvable according to the criteria and procedures of § 63.91 and either of § 63.92, § 63.93 or § 63.94.

(7) A State may voluntarily withdraw from an approved State rule, program or portion of a rule or program by notifying the EPA and all affected sources subject to the rule or program and providing notice and opportunity for comment to the public within the State.

(i) Upon voluntary withdrawal by a State, the Administrator will publish a timetable for sources subject to the previously approved State rule or program to come into compliance with applicable Federal requirements.

(ii) Upon voluntary withdrawal, the State must reopen and revise the part 70 permits of all sources affected by the withdrawal as provided for in this section and § 70.7(f), and the Federal rule, emission standard, or requirement that would have been applicable in the absence of approval under this subpart will become the applicable requirement for the source.

(iii) Any applicable Federal section 112 rule, emission standard or requirement shall remain enforceable by the EPA as specified in section 112(l)(7) of the Act.

(iv) Voluntary withdrawal shall not be effective sooner than 180 days after the State notifies the EPA of its intent to voluntarily withdraw.

#### **§§ 63.97–63.98 [Reserved]**

#### **§ 63.99 Delegated Federal authorities.**

(a) This section lists the specific source categories that have been delegated to the air pollution control agencies in each State under the procedures described in this subpart.

(1) [Reserved]

(2) Alaska.

(i) The following table lists the specific part 63 standards that have been delegated unchanged to the Alaska Department of Environmental Conservation. The (X) symbol is used to indicate each subpart that has been delegated.

## DELEGATION STATUS FOR PART 63 STANDARDS—ALASKA

Subpart		Alaska Department of Environmental Conservation (1/18/97)
A .....	General Provisions <sup>1</sup> .....	X
D .....	Early Reductions .....	X
F .....	HON-SOCMI.	
G .....	HON-Process Vents.	
H .....	HON-Equipment Leaks.	
I .....	HON-Negotiated Leaks.	
L .....	Coke Oven Batteries.	
M .....	Perc Dry Cleaning .....	X
N .....	Chromium Electroplating .....	X <sup>2</sup>
O .....	Ethylene Oxide Sterilizers.	
Q .....	Industrial Process Cooling Towers .....	X
R .....	Gasoline Distribution .....	X
S .....	Pulp and Paper.	
T .....	Halogenated Solvent Cleaning .....	X
U .....	Polymers and Resins I.	
W .....	Polymers and Resins II-Epoxy.	
X .....	Secondary Lead Smelting.	
Y .....	Marine Tank Vessel Loading .....	X
CC .....	Petroleum Refineries .....	X
DD .....	Off-Site Waste and Recovery .....	X
EE .....	Magnetic Tape Manufacturing.	
GG .....	Aerospace Manufacturing & Rework.	
II .....	Shipbuilding and Ship Repair .....	X
JJ .....	Wood Furniture Manufacturing Operations .....	X
KK .....	Printing and Publishing Industry .....	X
LL .....	Primary Aluminum.	
OO .....	Tanks—Level 1.	
PP .....	Containers.	
QQ .....	Surface Impoundments.	
RR .....	Individual Drain Systems.	
VV .....	Oil-Water Separators and Organic-Water Separators.	
EEE .....	Hazardous Waste Combustors.	
JJJ .....	Polymers and Resins IV.	

<sup>1</sup> Authorities which are not delegated include: 40 CFR 63.6(g); 63.6(h)(9); 63.7(e)(2)(ii) and (f) for approval of major alternatives to test methods; 63.8(f) for approval of major alternatives to monitoring; 63.10(f); and all authorities identified in the subparts (i.e., under "Delegation of Authority") that cannot be delegated. For definitions of minor, intermediate, and major alternatives to test methods and monitoring, see memorandum from John Seitz, Office of Air Quality Planning and Standards, dated July, 10, 1998, entitled, "Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies."

<sup>2</sup> Alaska received delegation for Subpart N (Chromium Electroplating) as it applies to sources required to obtain an operating permit under Alaska's regulations. EPA retains the authority for implementing and enforcing Subpart N for area source chromium electroplating and anodizing operations which have been exempted from Part 70 permitting in 40 CFR 63.340(e)(1).

## (ii) [Reserved]

NOTE TO PARAGRAPH (a)(2): The date in parenthesis indicates the effective date of the federal rules that have been adopted by and delegated to the Alaska Department of Environmental Conservation. Therefore, any amendments made to these delegated rules after this effective date are not delegated to the agency.

(3) *Arizona*. The following table lists the specific part 63 standards that have been delegated unchanged to the air pollution control agencies in the State of Arizona. The (X) symbol is used to indicate each category that has been delegated.

## DELEGATION STATUS FOR PART 63 STANDARDS—ARIZONA

Subpart	Description	ADEQ <sup>1</sup>	MCESD <sup>2</sup>	PDEQ <sup>3</sup>	PCAQCD <sup>4</sup>
A .....	General Provisions .....	X		X	X
F .....	Synthetic Organic Chemical Manufacturing Industry .....	X		X	X
G .....	Synthetic Organic Chemical Manufacturing Industry: Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	X		X	X
H .....	Organic Hazardous Air Pollutants: Equipment Leaks.	X		X	X

## DELEGATION STATUS FOR PART 63 STANDARDS—ARIZONA—Continued

Subpart	Description	ADEQ <sup>1</sup>	MCESD <sup>2</sup>	PDEQ <sup>3</sup>	PCAQCD <sup>4</sup>
I .....	Organic Hazardous Air Pollutants: Certain Processes Subject to the Negotiated Regulation for Equipment.	X	.....	X	X
L .....	Coke Oven Batteries .....	X	.....	X	X
M .....	Perchloroethylene Dry Cleaning .....	X	.....	X	X
N .....	Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.	X	.....	X	X
O .....	Ethylene Oxide Sterilization Facilities .....	X	.....	X	X
Q .....	Industrial Process Cooling Towers .....	X	.....	X	X
R .....	Gasoline Distribution Facilities .....	X	.....	X	X
T .....	Halogenated Solvent Cleaning .....	X	.....	X	X
U .....	Group I Polymers and Resins .....	X	.....	X	X
W .....	Epoxy Resins Production and Non-Nylon Polyamides Production.	X	.....	X	X
X .....	Secondary Lead Smelting .....	X	.....	X	X
CC .....	Petroleum Refineries .....	X	.....	X	X
DD .....	Off-Site Waste and Recovery Operations .....	X	.....	X	X
EE .....	Magnetic Tape Manufacturing Operations .....	X	.....	X	X
GG .....	Aerospace Manufacturing and Rework Facilities .....	X	.....	X	X
JJ .....	Wood Furniture Manufacturing Operations .....	X	.....	X	X
KK .....	Printing and Publishing Industry .....	X	.....	X	X
OO .....	Tanks—Level 1 .....	X	.....	.....	X
PP .....	Containers .....	X	.....	.....	X
QQ .....	Surface Impoundments .....	X	.....	.....	X
RR .....	Individual Drain Systems .....	X	.....	.....	X
VV .....	Oil-Water Separators and Organic-Water Separators.	X	.....	.....	X
JJJ .....	Group IV Polymers and Resins .....	X	.....	.....	X

<sup>1</sup> Arizona Department of Environmental Quality.<sup>2</sup> Maricopa County Environmental Services Department.<sup>3</sup> Pima County Department of Environmental Quality.<sup>4</sup> Pinal County Air Quality Control District.

(4) [Reserved]

(5) California

(i) [Reserved]

(ii) Affected sources must comply with the *California Regulatory Requirements Applicable to the Air Toxics Program*, January 5, 1999 (incorporated by reference as specified in § 63.14) as described as follows:

(A) The material incorporated in Chapter 1 of the *California Regulatory Requirements Applicable to the Air Toxics Program* (California Code of Regulations Title 17, section 93109) pertains to the perchloroethylene dry cleaning source category in the State of California, and has been approved under the procedures in § 63.93 to be implemented and enforced in place of subpart M—National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as it applies to area sources only, as defined in § 63.320(h).

(1) Authorities not delegated.

(i) California is not delegated the Administrator's authority to implement and enforce California Code of Regulations Title 17, section 93109, in lieu of those provisions of subpart M which

apply to major sources, as defined in § 63.320(g). Dry cleaning facilities which are major sources remain subject to subpart M.

(ii) California is not delegated the Administrator's authority of § 63.325 to determine equivalency of emissions control technologies. Any source seeking permission to use an alternative means of emission limitation, under sections 93109(a)(17), 93109(g)(3)(A)(5), 93109(g)(3)(B)(2)(iii), and 93109(h) of the California Airborne Toxic Control Measure, must also receive approval from the Administrator before using such alternative means of emission limitation for the purpose of complying with section 112.

(B) The material incorporated in Chapter 2 of the *California Regulatory Requirements Applicable to the Air Toxics Program* (San Luis Obispo County Air Pollution Control District Rule 432) pertains to the perchloroethylene dry cleaning source category in the San Luis Obispo County Air Pollution Control District, and has been approved

under the procedures in § 63.93 to be implemented and enforced in place of subpart M—National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as it applies to area sources only, as defined in § 63.320(h).

(I) Authorities not delegated.

(i) San Luis Obispo County Air Pollution Control District is not delegated the Administrator's authority to implement and enforce Rule 432 in lieu of those provisions of subpart M which apply to major sources as defined in § 63.320(g). Dry cleaning facilities which are major sources remain subject to subpart M.

(ii) San Luis Obispo County Air Pollution Control District is not delegated the Administrator's authority of § 63.325 to determine equivalency of emissions control technologies. Any source seeking permission to use an alternative means of emission limitation, under sections B.17, G.3.a.5, G.3.b.2.iii, and I of Rule 432, must also receive approval from the Administrator before using such alternative means of emission limitation for the purpose of complying with section 112.

(C) The material incorporated in Chapter 3 of the *California Regulatory Requirements Applicable to the Air Toxics Program* (South Coast Air Quality Management District Rule 1421) pertains to the perchloroethylene dry cleaning source category in the South Coast Air Quality Management District, and has been approved under the procedures in § 63.93 to be implemented and enforced in place of Subpart M—National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as it applies to area sources only, as defined in § 63.320(h).

(I) Authorities not delegated.

(i) South Coast Air Quality Management District is not delegated the Administrator's authority to implement and enforce Rule 1421 in lieu of those provisions of Subpart M which apply to major sources, as defined in § 63.320(g). Dry cleaning facilities which are major sources remain subject to Subpart M.

(ii) South Coast Air Quality Management District is not delegated the Administrator's authority of § 63.325 to determine equivalency of emissions control technologies. Any source seeking permission to use an alternative means

of emission limitation, under sections (c)(17), (d)(3)(A)(v), (d)(4)(B)(ii)(III), and (j) of Rule 1421, must also receive approval from the Administrator before using such alternative means of emission limitation for the purpose of complying with section 112.

(D) The material incorporated in Chapter 4 of the *California Regulatory Requirements Applicable to the Air Toxics Program* (Yolo-Solano Air Quality Management District Rule 9.7) pertains to the perchloroethylene dry cleaning source category in the Yolo-Solano Air Quality Management District, and has been approved under the procedures in § 63.93 to be implemented and enforced in place of subpart M—National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as it applies to area sources only, as defined in § 63.320(h).

(I) Authorities not delegated.

(i) Yolo-Solano Air Quality Management District is not delegated the Administrator's authority to implement and enforce Rule 9.7 in lieu of those provisions of subpart M which apply to major sources, as defined in § 63.320(g). Dry cleaning facilities which are major sources remain subject to subpart M.

(ii) Yolo-Solano Air Quality Management District is not delegated the Administrator's authority of § 63.325 to determine equivalency of emissions control technologies. Any source seeking permission to use an alternative means of emission limitation, under sections 216, 301.3.a(v), 301.3.b(ii)(c), and 502 of Rule 9.7, must also receive approval from the Administrator before using such alternative means of emission limitation for the purpose of complying with section 112.

(E) The material incorporated in Chapter 5 of the *California Regulatory Requirements Applicable to the Air Toxics Program* (California Code of Regulations, Title 17, section 93102) pertains to the chromium electroplating and anodizing source category in the State of California, and has been approved under the procedures in § 63.93 to be implemented and enforced in place of subpart N—National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.

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(1) *Title V requirements.* Subpart N affected sources remain subject to both the Title V permitting requirements of §63.340(e)(2) and, for major sources, the semi-annual submission of the ongoing compliance status reports as required by §63.347(g).

(2) *Limits on maximum cumulative potential rectifier usage.* Section 93102(h)(7)(B) of the California Airborne Toxic Control Measure allows facilities with a maximum cumulative potential rectifier capacity of greater than 60 million ampere-hours per year to be considered small or medium by accepting a limit on the maximum cumulative potential rectifier usage. All such usage limits in non-Title V operating permits are federally-enforceable for the purpose of this rule substitution.

(3) *Permitting Agencies' breakdown/malfunction rules.* Section 93102(i)(4) of the California Airborne Toxic Control Measure provides that the owner or operator shall report breakdowns as required by the permitting agency's breakdown rule. Under this rule substitution, the permitting agencies' breakdown rules do not override or supplant the requirements of section 93102(g)(4), (h)(5), (h)(6), (i)(3)(B), or Appendix 3; neither expand the scope nor extend

the time-frame of a breakdown beyond the definition of section 93102(b)(7); and do not grant the permitting agencies the authority to determine whether a breakdown has occurred, to grant emergency variances, or to decide to take no enforcement action. Owners or operators must submit written breakdown reports even if the permitting agency has not formally requested such reports.

(4) *Performance Test Requirements.* Section 93102(d)(3)(A) of the California Airborne Toxic Control Measure allows the use of California Air Resources Board Method 425, dated July 28, 1997, and South Coast Air Quality Management District Method 205.1, dated August 1991, for determining chromium emissions. Any alternatives, modifications, or variations to these test methods must be approved under the procedures in section 93102(k) of the California Airborne Toxic Control Measure.

(6)-(27) [Reserved]

(28) Nevada.

(i) The following table lists the specific part 63 standards that have been delegated unchanged to the air pollution control agencies in the State of Nevada. The (X) symbol is used to indicate each category that has been delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—NEVADA

Subpart	Description	NDEP <sup>1</sup>	WCDHD <sup>2</sup>	CCHD <sup>3</sup>
A .....	General Provisions .....	X	X	
M .....	Perchloroethylene Dry Cleaning .....	X	X	
N .....	Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks .....	X	X	
O .....	Ethylene Oxide Sterilization Facilities .....		X	
Q .....	Industrial Process Cooling Towers .....	X		
R .....	Gasoline Distribution Facilities .....		X	
T .....	Halogenated Solvent Cleaning .....	X	X	
JJ .....	Wood Furniture Manufacturing Operations .....	X		
KK .....	Printing and Publishing Industry .....	X	X	
OO .....	Tanks—Level 1 .....	X		
PP .....	Containers .....	X		
QQ .....	Surface Impoundments .....	X		
RR .....	Individual Drain Systems .....	X		
VV .....	Oil-Water Separators and Organic-Water Separators .....	X		

<sup>1</sup> Nevada Department of Environmental Protection.

<sup>2</sup> Washoe County District Health Department.

<sup>3</sup> Clark County Health Department.

(ii) [Reserved]

(29)-(46) [Reserved]

(47) Washington.

(i) The following table lists the specific Part 63 standards that have been delegated unchanged to state and local

air pollution control agencies in Washington. The (X) symbol is used to indicate each subpart that has been delegated.

## DELEGATION STATUS FOR PART 63 STANDARDS—WASHINGTON

Subpart	Ecology <sup>1</sup>	BCAA <sup>2</sup>	NWAPA <sup>3</sup>	OAPCA <sup>4</sup>	PSAPCA <sup>5</sup>	SCAPCA <sup>6</sup>	SWAPCA <sup>7</sup>	YRCAA <sup>8</sup>
A ..... General Provisions <sup>9</sup> .....					X		X	
D ..... Early Reductions .....			X		X		X	
F ..... HON-SOCMI .....			X		X		X	
G ..... HON-Process Vents .....			X		X		X	
H ..... HON-Equipment Leaks .....			X		X		X	
I ..... HON-Negotiated Leaks .....			X		X		X	
L ..... Coke Oven Batteries .....			X		X		X	
M ..... Perc Dry Cleaning .....			X		X		X	
N ..... Chromium Electroplating .....			X		X		X	
O ..... Ethylene Oxide Sterilizers .....			X		X		X	
Q ..... Industrial Process Cooling Towers .....			X		X		X	
R ..... Gasoline Distribution .....			X		X		X	
S ..... Pulp and Paper .....					X		X	
T ..... Halogenated Solvent Cleaning .....			X		X		X	
U ..... Polymers and Resins I .....			X		X		X	
W ..... Polymers and Resins II-Epoxy .....			X		X		X	
X ..... Secondary Lead Smelting .....			X		X		X	
Y ..... Marine Tank Vessel Loading .....			X		X		X	
CC ..... Petroleum Refineries .....			X		X		X	
DD ..... Off-Site Waste and Recovery .....			X		X		X	
EE ..... Magnetic Tape Manufacturing .....			X		X		X	
GG ..... Aerospace Manufacturing & Rework .....			X		X		X	
II ..... Shipbuilding and Ship Repair .....			X		X		X	
JJ ..... Wood Furniture Manufacturing Operations .....			X		X		X	
KK ..... Printing and Publishing Industry .....			X		X		X	
LL ..... Primary Aluminum .....					X			
OO ..... Tanks—Level 1 .....			X		X			
PP ..... Containers .....			X		X			
QQ ..... Surface Impoundments .....			X		X			
RR ..... Individual Drain Systems .....			X		X			
VV ..... Oil-Water Separators and Organic-Water Separators .....			X		X			
EEE ..... Hazardous Waste Combustors .....					X			
JJJ ..... Polymers and Resins IV .....			X		X		X	

<sup>1</sup> Washington Department of Ecology<sup>2</sup> Benton Clean Air Authority<sup>3</sup> Northwest Air Pollution Authority (5/14/98)<sup>4</sup> Olympic Air Pollution Control Authority<sup>5</sup> Puget Sound Air Pollution Control Agency (7/1/98)<sup>6</sup> Spokane County Air Pollution Control Authority<sup>7</sup> Southwest Air Pollution Control Authority (8/1/96)<sup>8</sup> Yakima Regional Clean Air Authority<sup>9</sup> Authorities which are not delegated include: 40 CFR 63.6(g); 63.6(h)(9); 63.7(e)(2)(ii) and (f) for approval of major alternatives to test methods; 63.8(f) for approval of major alternatives to test methods; 63.10(f); and all authorities identified in the subparts (i.e., under "Delegation of Authority") that cannot be delegated. For definitions of minor, intermediate, and major alternatives to test methods and monitoring, see memorandum from John Seitz, Office of Air Quality Planning and Standards, dated July, 10, 1998, entitled, "Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies."

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NOTE TO PARAGRAPH (a)(47): Dates in parenthesis indicate the effective date of the federal rules that have been adopted by and delegated to the state or local air pollution control agency. Therefore, any amendments made to these delegated rules after this effective date are not delegated to the agency.

[61 FR 25399, May 21, 1996, as amended at 62 FR 65025, Dec. 10, 1997; 63 FR 26466, May 13, 1998; 63 FR 28909, May 27, 1998; 63 FR 63993, Nov. 18, 1998; 63 FR 66061, Dec. 1, 1998; 64 FR 4300, Jan. 28, 1999; 64 FR 12766, Mar. 15, 1999; 64 FR 19721, Apr. 22, 1999; 64 FR 24291, May 6, 1999; 64 FR 34563, June 28, 1999]

EFFECTIVE DATE NOTE: At 64 FR 34563, June 28, 1999, § 63.99 was amended by revising para-

graph (a)(3), effective Aug. 27, 1999. For the convenience of the user, the superseded text is set forth as follows:

### § 63.99 Delegated Federal authorities.

(a) \* \* \*

\* \* \* \* \*

(3) *Arizona*. The following table lists the specific Part 63 standards that have been delegated unchanged to the air pollution control agencies in the State of Arizona. The (X) symbol is used to indicate each category that has been delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—ARIZONA

Subpart	Description	ADEQ <sup>1</sup>	MCESD <sup>2</sup>	PDEQ <sup>3</sup>	PCAQCD <sup>4</sup>
A .....	General Provisions .....	X			X
F .....	Synthetic Organic Chemical Manufacturing Industry.	X			X
G .....	Synthetic Organic Chemical Manufacturing Industry: Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	X			X
H .....	Organic Hazardous Air Pollutants: Equipment Leaks.	X			X
I .....	Organic Hazardous Air Pollutants: Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	X			X
L .....	Coke Oven Batteries .....	X			X
M .....	Perchloroethylene Dry Cleaning .....	X			X
N .....	Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.	X			X
O .....	Ethylene Oxide Sterilization Facilities .....	X			X
Q .....	Industrial Process Cooling Towers .....	X			X
R .....	Gasoline Distribution Facilities .....	X			X
T .....	Halogenated Solvent Cleaning .....	X			X
U .....	Group I Polymers and Resins .....	X			X
W .....	Epoxy Resins Production and Non-Nylon Polyamides Production.	X			X
X .....	Secondary Lead Smelting .....	X			X
CC .....	Petroleum Refineries .....	X			X
DD .....	Off-Site Waste and Recovery Operations .....	X			X
EE .....	Magnetic Tape Manufacturing Operations .....	X			X
GG .....	Aerospace Manufacturing and Rework Facilities .....	X			X
JJ .....	Wood Furniture Manufacturing Operations .....	X			X
KK .....	Printing and Publishing Industry .....	X			X
OO .....	Tanks—Level 1 .....	X			X
PP .....	Containers .....	X			X
QQ .....	Surface Impoundments .....	X			X
RR .....	Individual Drain Systems .....	X			X
VV .....	Oil-Water Separators and Organic-Water Separators.	X			X
JJJ .....	Group IV Polymers and Resins .....	X			X

<sup>1</sup> Arizona Department of Environmental Quality.

<sup>2</sup> Maricopa County Environmental Services Department.

<sup>3</sup> Pima County Department of Environmental Quality.

<sup>4</sup> Pinal County Air Quality Control District.

\* \* \* \* \*